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though the denial of the husband's right were not equally well settled, it is plain that the step which, it is claimed, is required by justice is not a new application of an existing common-law principle, but the creation of a new principle. Such a step would be better taken by statute and not accomplished by sheer judicial legislation.[12]

RECENT CASES.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — ATTORNEY'S CONSENT TO HEARING BEFORE LESS THAN FULL COURT. — A statute provided that every appeal to a certain court should, when the subject-matter was a final order, be heard before not less than three judges, unless all parties filed a consent to its being heard before two judges. The parties themselves not being present in court when such an appeal was called, their counsel filed a written consent that the appeal should be heard before the two judges present. *Held*, that the two judges may hear the appeal. *Haworth* v. *Pilbrow*, [1912] Wkly. Notes 6 (Eng., C. A., Dec. 12, 1911).

An attorney has been said to be the general agent of the client in all matters which may reasonably be expected to arise for decision in the cause. See *Prestwich* v. *Poley*, 18 C. B. N. S. 806, 816. He has complete authority over the suit, the mode of conducting it, and all that is incident to it, though not over collateral matters. See *Swinfen* v. *Lord Chelmsford*, 5 H. & N. 890, 922. It is well settled that an attorney has the power to consent to a reference of the cause to arbitrators without special authority from his client. *Filmer* v. *Delber*, 3 Taunt. 486; *Brooks* v. *New Durham*, 55 N. H. 559. Cases of this class rest upon the principle that authority to prosecute a suit implies a power to adopt any mode of prosecution which the law provides. *Buckland* v. *Conway*, 16 Mass. 395; *Smith* v. *Bossard*, 2 McCord Eq. (S. C.) 406. The principal case seems within this rule. The statute, as amended, made legal the trial of a final appeal before two judges. STAT. 38 & 39 VICT. c. 77, § 12; STAT. 62 & 63 VICT. c. 6, § 1. Hence the consent of the attorney to this mode of trial is within his implied powers and in such a case is the consent of the client himself.

BANKS AND BANKING — DEPOSITS — SPECIAL DEPOSIT OF CHECK AS COLLATERAL SECURITY. — A bank discounted notes for the plaintiff and took from him as collateral security a check for $2000, charging his account with $2000. The bank suspended payment. The notes were duly paid. The plaintiff sued to recover the $2000 left as collateral security. *Held*, that he must share as a general creditor. *Richardson* v. *Cheney*, 146 N. Y. App. Div. 686, 131 N. Y. Supp. 594.

When a bank discounts notes, and extends credit for their value, it is a simple debtor. *Carstairs* v. *Bates*, 3 Campb. 301. The ordinary relation of banker to depositor is that of debtor. *Marine Bank* v. *Fulton Bank*, 2 Wall. (U. S.) 252. If the depositor agrees not to use part of his credit, the banker remains no less a debtor. But if the collateral security is deposited to be returned *in specie*, the transaction constitutes a bailment. *Jenkins* v. *National Village Bank*,

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hold property and depriving the husband of his right to her services, the husband is no longer liable for debts of his wife contracted before marriage. Howarth *v.* Warmser, 58 Ill. 48.

[12] See 2 BISHOP, MARRIAGE AND DIVORCE, 5 ed., § 469.

58 Me. 275. If the bank is not allowed to mix the fund with its general assets, there is a trust. *McLeod* v. *Evans*, 66 Wis. 401, 28 N. W. 173; *Harrison* v. *Smith*, 83 Mo. 210. Deposits for a special purpose, such as security, have often been called trusts. *People* v. *City Bank of Rochester*, 96 N. Y. 32; *Kimmel* v. *Dickson*, 5 S. D. 221, 58 N. W. 561. Whether they are is essentially a question of fact. *Mutual Accident Association* v. *Jacobs*, 141 Ill. 261, 31 N. E. 414; *Anderson* v. *Pacific Bank*, 112 Cal. 598, 44 Pac. 1063. Ordinarily, when money is deposited, the bank may use it as its own. It merely promises to pay over a similar amount when the special purpose is accomplished. *Hill* v. *Smith*, 12 M. & W. 618. In the absence of special circumstances to show that the fund is to be kept intact, the deposit creates only a debt. *Mulford* v. *People*, 139 Ill. 586, 28 N. E. 1096. Thus a deposit to be paid to a third party may be withdrawn before the beneficiary accepts. *Brockmeyer* v. *Washington National Bank*, 40 Kan. 376, 19 Pac. 855; *First National Bank* v. *Higbee*, 109 Pa. St. 130.

BILLS OF PEACE — APPLICABILITY TO NEGLIGENCE CASES. — An explosion in the complainant's mine killed 110 workmen, whose administrators, the defendants, sued the complainant at law under the Employers' Liability Act. The complainant's bill asked to have these suits enjoined, and its liability determined in equity, and damages assessed in equity if it should be found liable. *Held*, that the case is not within equity jurisdiction. *Southern Steel Co.* v. *Hopkins*, 57 So. 11 (Ala.).

Pomeroy's rule that the mere presence of a single issue in many suits against the same person is a basis of equitable interposition has been much disputed. See 1 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 264, note (b). It receives its severest test when applied to enjoining several suits for injuries caused by a single act of the complainant, for courts hesitate to deny jury trials in such cases. If the complainant presents to the equity court an issue of contributory negligence, or of damages, with each defendant, so that no simplification would result from a single trial, Pomeroy's rule does not apply; but where a single issue is presented, by the complainant's alleging absence of negligence on his part, jurisdiction should be taken. See 1 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 251½. But courts failing to appreciate this distinction have rejected Pomeroy's rule altogether. *Tribette* v. *Illinois Central R. Co.*, 70 Miss. 182, 12 So. 32; *Ducktown Sulphur, Copper, & Iron Co.* v. *Fain*, 109 Tenn. 56, 70 S. W. 813; *Vandalia Coal Co.* v. *Lawson*, 43 Ind. App. 226, 87 N. E. 47. It is to be regretted that the Alabama court, in overruling a former decision based on Pomeroy's rule, while now recognizing that the case was not within the rule, nevertheless repudiates the rule. Only one opinion adopts Pomeroy's rule in a negligence case. *Whitlock* v. *Yazoo & Mississippi Valley R. Co.*, 91 Miss. 779, 45 So. 861 (tacitly overruling *Tribette* v. *Illinois Central R. Co.*, *supra*).

BOUNDARIES — PAROL AGREEMENT TO ESTABLISH BOUNDARY. — The owner of a lot conveyed a part of it to the defendants by a deed in which the boundaries were described by courses and distances. The vendor pointed out the boundary to the purchaser and the latter erected a house along the line indicated. The plaintiff by mesne conveyances acquired the adjoining portion of the lot and discovered that the established line did not correspond with the deed. The plaintiffs and each of their predecessors had been shown the land prior to their respective purchases. *Held*, that the boundary established by the parol agreement should govern. *Price* v. *De Reyes*, 119 Pac. 893 (Cal.).

A parol agreement between adjoining landowners as to the location of a disputed boundary, followed by acquiescence in possession according to the agreement, is binding. *Steidl* v. *Link*, 246 Ill. 345, 92 N. E. 874; *Tritt* v. *Hoover*, 116 Mich. 4, 74 N. W. 177. If the description in the deed is ambiguous, such an agreement is not within the Statute of Frauds, as it involves no transfer